



**UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable René Lastreto II  
Tuesday, February 14, 2023  
Department B – Courtroom #13  
Fresno, California**

Unless otherwise ordered, all hearings before Judge Lastreto are simultaneously: (1) **IN PERSON** in Courtroom #13 (Fresno hearings only), (2) via **ZOOMGOV VIDEO**, (3) via **ZOOMGOV TELEPHONE**, and (4) via **COURTCALL**. You may choose any of these options unless otherwise ordered. Parties in interest and members of the public may connect to ZoomGov, free of charge, using the information provided:

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## **INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS**

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

**No Ruling:** All parties will need to appear at the hearing unless otherwise ordered.

**Tentative Ruling:** If a matter has been designated as a tentative ruling it will be called, and all parties will need to appear at the hearing unless otherwise ordered. The court may continue the hearing on the matter, set a briefing schedule, or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

**Final Ruling:** Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

**Orders:** Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

**Post-Publication Changes:** The court endeavors to publish its rulings as soon as possible. However, calendar preparation is ongoing, and these rulings may be revised or updated at any time prior to 4:00 p.m. the day before the scheduled hearings. Please check at that time for any possible updates.

9:30 AM

1. [22-11540](#)-B-11     **IN RE: VALLEY TRANSPORTATION, INC.**  
[WJH-10](#)

CONTINUED MOTION TO ASSUME LEASE OR EXECUTORY CONTRACT  
11-17-2022    [[122](#)]

VALLEY TRANSPORTATION, INC./MV  
RILEY WALTER/ATTY. FOR DBT.

FINAL RULING:        There will be no hearing on this matter.

DISPOSITION:        Granted.

ORDER:                The Moving Party shall submit a proposed order in  
conformance with the ruling below.

This motion was originally heard on January 10, 2023. Doc. #207. The defaults of non-responding parties were entered, and the matter was continued to February 14, 2023 so that the debtor could augment the record not later than January 31, 2023. *Id.*; Doc. #232.

Valley Transportation, Inc. ("Debtor") moved for authority to assume a written lease of land and improvements with respect to real property commonly known as 2740 E. Church Ave., Fresno, CA 93706 ("Property"), including all modifications and amendments, dated January 1, 2015 (the "Lease") by and between Deborah Simpson ("Lessor") and Debtor pursuant to 11 U.S.C. § 365 and Fed. R. Bankr. P. ("Rule") 6006 and 9014. Doc. #122.

On January 13, 2023, Debtor augmented the record with a declaration from Lessor. Doc. #241.

No party in interest timely filed written opposition. This motion will be GRANTED.

Debtor is a California corporation formed in 1991 and is 100% owned by Lessor. Docs. #125; #203. Debtor executed a lease with Lessor for the use of Property on January 1, 2015. Doc. #241. Lessor is Debtor's CEO, CFO, and Secretary. Debtor is headquartered in Fresno, California, and all of its principal assets are located in Fresno and Kern Counties, California.

Debtor offers trucking services using its own vehicles as part of its business, which are stored when not in use. Property includes a warehouse and storage area for vehicles and equipment used in the operation of Debtor's business. For rent, Debtor pays \$3,000.00 per month—or \$36,000 per year—to Lessor, who is also Debtor's sole shareholder. Doc. #125. A copy of the Lease has been included with this motion as an exhibit. See Doc. #124.

Debtor filed chapter 11, subchapter V bankruptcy on September 1, 2022. Doc. #1. Debtor has paid all pre- and post-petition obligations due, so the lease is current up to the petition date.

11 U.S.C. § 1184 gives a chapter 11, subchapter V debtor-in-possession all rights and powers of a trustee and shall perform all functions and duties of a trustee, certain exceptions notwithstanding.

11 U.S.C. § 365(a) allows a trustee [or debtor-in-possession] to assume or reject any executory contract or unexpired lease of the debtor.

Here, Debtor claims that the Lease is current, and Debtor will keep its obligations current if the motion is granted. Doc. #125. Further, Debtor contends that assumption of the Lease is in the best interests of Debtor, its ongoing business, and Debtor's creditors. Debtor is paying below-market rate for rent, so the Lease is crucial in the continued operation of its business and the storage and maintenance of its vehicles and equipment used in the operation of its business. If the Lease is not assumed, the chances of successful reorganization diminish greatly, says Debtor. *Id.*; Doc. #241.

In evaluating a decision to reject an executory contract or unexpired lease in the Ninth Circuit, "the bankruptcy court should presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate." *Agarwal v. Pomona Valley Med. Group, Inc. (In re Pomona Valley Med. Group, Inc.)*, 476 F.3d 665, 670 (9th Cir. 2007) (citations omitted).

Even though this motion is a motion to assume, not reject, the Lease, the analysis is identical. "[C]ourts are no more equipped to make subjective business decisions for . . . businesses . . ." *Agarwal v. Pomona Valley Med. Group, Inc. (In re Pomona Valley Med. Group, Inc.)*, 476 F.3d 665, 670 (9th Cir. 2007) (citations omitted). *Id.* The presumption has not been rebutted, and therefore the court finds that the Debtor's decision to assume the Lease is consistent with the business judgment rule and Ninth Circuit precedent.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Debtor will be authorized to assume the Lease with Lessor.

2. [22-11540](#)-B-11     **IN RE: VALLEY TRANSPORTATION, INC.**  
[WJH-11](#)

CONTINUED MOTION TO ASSUME LEASE OR EXECUTORY CONTRACT  
11-17-2022    [\[127\]](#)

VALLEY TRANSPORTATION, INC./MV  
RILEY WALTER/ATTY. FOR DBT.

FINAL RULING:     There will be no hearing on this matter.

DISPOSITION:     Granted.

ORDER:             The Moving Party shall submit a proposed order in  
conformance with the ruling below.

This motion was originally heard on January 10, 2023. Doc. #208. The defaults of non-responding parties were entered, and the matter was continued to February 14, 2023 so that the debtor could augment the record not later than January 31, 2023. *Id.*; Doc. #230.

Valley Transportation, Inc. ("Debtor") moved for authority to assume a written lease of land and improvements with respect to real property commonly known as 2837 S. East Ave., Fresno, CA 93725 ("Property"), including all modifications and amendments, dated January 1, 2018 (the "Lease") by and between Deborah Simpson ("Lessor") and Debtor pursuant to 11 U.S.C. § 365 and Fed. R. Bankr. P. ("Rule") 6006 and 9014. Doc. #127.

On January 13, 2023, Debtor augmented the record with a declaration from Lessor. Doc. #243.

Debtor is a California corporation formed in 1991 and is 100% owned by Lessor. Docs. #129; #203. Debtor executed a written lease for the use of Property with Lessor on January 1, 2018. Doc. #243. Lessor is Debtor's CEO, CFO, and Secretary. Debtor is headquartered in Fresno, California, and all of its principal assets are located in Fresno and Kern Counties, California.

Debtor offers trucking services using its own vehicles as part of its business, which are stored when not in use. Property includes Debtor's headquarters, office space, and storage space for its records and other equipment used in the operation of Debtor's business. Doc. #129. For rent, Debtor pays \$10,000.00 per month—or \$120,000 per year—to Lessor, who is also Debtor's sole shareholder. *Id.* A copy of the Lease has been included with this motion as an exhibit. See Doc. #130.

Debtor filed chapter 11, subchapter V bankruptcy on September 1, 2022. Doc. #1. Debtor has paid all pre- and post-petition obligations due, so the lease is current up to the petition date. Doc. #129.

11 U.S.C. § 1184 gives a chapter 11, subchapter V debtor-in-possession all rights and powers of a trustee and shall perform all functions and duties of a trustee, certain exceptions notwithstanding.

11 U.S.C. § 365(a) allows a trustee [or debtor-in-possession] to assume or reject any executory contract or unexpired lease of the debtor.

Here, Debtor claims that the Lease is current, and Debtor will keep its obligations current if the motion is granted. Doc. #129. Further, Debtor contends that assumption of the Lease is in the best interests of Debtor, its ongoing business, and Debtor's creditors. Debtor believes it is paying below-market rate for rent, so the Lease is crucial in the continued operation of its business, including as its corporate headquarters, office space for its employees, and storage space for its corporate records. If the Lease is not assumed, the chances of successful reorganization diminish greatly, says Debtor. *Id.*; Doc. #243.

In evaluating a decision to reject an executory contract or unexpired lease in the Ninth Circuit, "the bankruptcy court should presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate." *Agarwal v. Pomona Valley Med. Group, Inc. (In re Pomona Valley Med. Group, Inc.)*, 476 F.3d 665, 670 (9th Cir. 2007) (citations omitted).

Even though this motion is a motion to assume, not reject, the Lease, the analysis is identical. "[C]ourts are no more equipped to make subjective business decisions for . . . businesses . . ." *Agarwal v. Pomona Valley Med. Group, Inc. (In re Pomona Valley Med. Group, Inc.)*, 476 F.3d 665, 670 (9th Cir. 2007) (citations omitted). *Id.* The presumption has not been rebutted, and therefore the court finds that the Debtor's decision to assume the Lease is consistent with the business judgment rule and Ninth Circuit precedent.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Debtor will be authorized to assume the Lease with Lessor.

3. [22-11540](#)-B-11     **IN RE: VALLEY TRANSPORTATION, INC.**  
[WJH-12](#)

CONTINUED MOTION TO ASSUME LEASE OR EXECUTORY CONTRACT  
11-17-2022    [\[132\]](#)

VALLEY TRANSPORTATION, INC./MV  
RILEY WALTER/ATTY. FOR DBT.

FINAL RULING:        There will be no hearing on this matter.

DISPOSITION:        Granted.

ORDER:                The Moving Party shall submit a proposed order in  
conformance with the ruling below.

This motion was originally heard on January 10, 2023. Doc. #209. The defaults of non-responding parties were entered, and the matter was continued to February 14, 2023 so that the debtor could augment the record not later than January 31, 2023. *Id.*; Doc. #224.

Valley Transportation, Inc. ("Debtor") moves for authority to assume a written lease of land and improvements with respect to real property commonly known as 3451 Unicorn Road, Suite #200, Bakersfield, CA 93308 ("Property"), including all modifications and amendments, dated November 18, 2015 (the "Lease") by and between Joseph Jaconi Company, Inc. ("Lessor") and Debtor pursuant to 11 U.S.C. § 365 and Fed. R. Bankr. P. ("Rule") 6006 and 9014. Doc. #132.

On January 13, 2023, Debtor augmented the record with a declaration from Deborah Simpson, Debtor's Chief Executive Officer, Chief Financial Officer, and Secretary. Doc. #245.

Debtor is a California corporation formed in 1991 and is 100% owned by Simpson. Docs. #134; #203. Debtor is headquartered in Fresno, California, and all of its principal assets are located in Fresno and Kern Counties, California. Debtor executed a lease with Lessor on November 18, 2015, which was subsequently amended in February 2021. Doc. #245.

Debtor offers trucking services using its own vehicles as part of its business, which are stored when not in use. Property includes office and warehouse space used by Debtor for its business operations in Kern County and the southern Central Valley. Doc. #134. For rent, Debtor pays \$12,895.60 per month—or \$154,747.20 per year—to Lessor. *Id.* A copy of the Lease and an amendment have been included with this motion as exhibits. See Doc. #135.

Debtor filed chapter 11, subchapter V bankruptcy on September 1, 2022. Doc. #1. Debtor has paid all pre- and post-petition obligations due, so the lease is current up to the petition date. Doc. #134.

11 U.S.C. § 1184 gives a chapter 11, subchapter V debtor-in-possession all rights and powers of a trustee and shall perform all functions and duties of a trustee, certain exceptions notwithstanding.

11 U.S.C. § 365(a) allows a trustee [or debtor-in-possession] to assume or reject any executory contract or unexpired lease of the debtor.

Here, Debtor claims that the Lease is current, and Debtor will keep its obligations current if the motion is granted. Doc. #134. Debtor contends that assumption of the Lease is in the best interests of Debtor, its ongoing business, and Debtor's creditors. Further, Debtor says that the Lease is crucial in the continued operation of its business, including the operation of its business in Kern County and the southern Central Valley, office space for its employees, and storage space vehicles and equipment used in operation of Debtor's business. If the Lease is not assumed, the chances of successful reorganization diminish greatly, says Debtor. *Id.*; Doc. #245.

In evaluating a decision to reject an executory contract or unexpired lease in the Ninth Circuit, "the bankruptcy court should presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate." *Agarwal v. Pomona Valley Med. Group, Inc. (In re Pomona Valley Med. Group, Inc.)*, 476 F.3d 665, 670 (9th Cir. 2007) (citations omitted).

Even though this motion is a motion to assume, not reject, the Lease, the analysis is identical. "[C]ourts are no more equipped to make subjective business decisions for . . . businesses . . ." *Agarwal v. Pomona Valley Med. Group, Inc. (In re Pomona Valley Med. Group, Inc.)*, 476 F.3d 665, 670 (9th Cir. 2007) (citations omitted). *Id.* The presumption has not been rebutted, and therefore the court finds that the Debtor's decision to assume the Lease is consistent with the business judgment rule and Ninth Circuit precedent.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Debtor will be authorized to assume the Lease with Lessor.



4. [18-11651](#)-B-11      **IN RE: GREGORY TE VELDE**

CONTINUED MOTION FOR FINAL DECREE  
10-30-2022    [\[3343\]](#)

ELIZABETH HOWARD/ATTY. FOR DBT.  
JOHN MACCONAGHY/ATTY. FOR MV.

FINAL RULING:      There will be no hearing on this matter.

DISPOSITION:      Granted.

ORDER:              The Moving Party shall submit a proposed order in  
conformance with the ruling below.

This motion was originally heard on January 10, 2023. Doc. #3351.

Chapter 11 liquidating trustee Randy Sugarman ("Trustee") moved for entry of final decree closing the chapter 11 bankruptcy case of Gregory John te Velde ("Debtor") under 11 U.S.C. § 350 and Fed. R. Bankr. P. ("Rule") 3022. Doc. #3343.

The defaults of non-responding parties were entered, and the matter was continued to February 14, 2023 so Debtor could file an adversary proceeding seeking a refund of United States Trustee fees. *Id.*; Doc. #3354.

No party in interest timely filed written opposition. This motion will be GRANTED.

11 U.S.C. § 350 requires the court to close the case after an estate is fully administered and the court has discharged the trustee.

Rule 3022 provides that after an estate is fully administered in a chapter 11 reorganization case, *sua sponte* or on motion of a party in interest, the court shall enter a final decree closing the case.

Here, Debtor filed chapter 11 bankruptcy on April 26, 2018. Doc. #1. Trustee was appointed as the chapter 11 trustee on September 21, 2018. Doc. #850. On November 25, 2019, the court entered an order confirming the *Chapter 11 Trustee's Plan of Reorganization* dated August 5, 2019, as modified September 27, 2019, and November 15, 2019 (the "Plan"). Docs. #2973; #2975. The order confirming the Plan was not appealed and became final on the effective date of the plan: December 26, 2019. Docs. #2992. As a result, all assets of the bankruptcy estate became vested in the Te Velde Liquidating Trust ("Liquidating Trust"). Doc. #3066.

"Substantial consummation" is defined in § 1101(2). It requires three things. First, transfer of all or substantially all property proposed by the plan to be transferred. Second, assumption by (in this case)

the Debtor's successor under the plan of the management of all or substantially all of the property dealt with by the plan. Third, commencement of distribution under the plan. "Substantial consummation" is a question of fact. *Jorgensen v. Federal Land Bank of Spokane (In re Jorgensen)*, 66 B.R. 104, 106 (B.A.P. 9th Cir. 1986).

The motion here claims that Trustee transferred all property required to be transferred under the terms of the Plan to the Liquidating Trust and the Liquidating Trust has commenced all payments required under the terms of the Plan. Doc. #3343. As of the present time, unsecured creditors have received payments aggregating to approximately a 25% dividend. Additionally, the motion says that all objections to claims have been resolved and the case has been fully administered. *Id.* The motion includes a "Verification" on the second page in which Trustee declares under penalty of perjury that the application is true and correct to the best of his information and belief. *Id.*

Two third party disputes remain outstanding. First, the adversary proceeding entitled *Sugarman v. IRZ Consulting, LLC*, and its consolidated matters, Adv. Proc. No. 19-1033. Second, the Trustee filed an action entitled *Sugarman v. United States Trustee Program*, Adv. Proc. No. 23-01012, for a refund of purportedly unconstitutional U.S. Trustee's fees paid in this matter in the approximate amount of \$2 million. *Id.* The basis for this action is the Supreme Court's ruling in *Siegel v. Fitzgerald*, 142 S. Ct. 1770 (2022), as interpreted by *In re John Q. Hammons Fall 2006 LLC*, 2022 WL 3354682 (10th Cir. 2022). As a result, Trustee requests the court to retain jurisdiction over both those matters following entry of the Final Decree, which Trustee says is appropriate under *In re Carraher*, 971 F.2d 327 (9th Cir. 1992). Doc. #3343.

Therefore, all motions in this bankruptcy case have been resolved other than the third-party actions discussed above. The plan has been substantially consummated under 11 U.S.C. § 1101(2).

The court will retain jurisdiction of both of the adversary proceedings described above. It is economical to retain jurisdiction of the IRZ adversary proceeding and its consolidated matters given the extensive litigation that has occurred over the past nearly four years. It is more convenient to do so since the parties have already presented this court and the District Court with numerous law and motion matters. It is fair to do so given the parties efforts in this court so far, as opposed to having to "start over" at great expense to the parties and the creditors who may benefit from the result. Finally, there are no comity issues here since other than one removed matter, there is no substantial state court involvement. The matter removed was removed early in the litigation.

The interests of judicial economy, fairness, and convenience may also be served through retention of jurisdiction of the adversary proceeding against the U.S. Trustee Program.

Accordingly, this motion will be GRANTED. The court will enter a final decree closing this case and reserving jurisdiction of the *Sugarman v. United States Trustee Program* and *Sugarman v. IRZ* adversary proceedings, and the consolidated matters described above.

5. [17-13797](#)-B-9     **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**  
[WJH-18](#)

CONTINUED SCHEDULING CONFERENCE RE: OBJECTION TO CLAIM OF  
TULARE HOSPITALIST GROUP, CLAIM NUMBER 231  
1-8-2020    [[1784](#)]

TULARE LOCAL HEALTHCARE DISTRICT/MV  
RILEY WALTER/ATTY. FOR DBT.  
RESPONSIVE PLEADING

FINAL RULING:     There will be no hearing on this matter.

DISPOSITION:     Continued to June 27, 2023 at 9:30 a.m.

NO ORDER REQUIRED.

The court is in receipt of Tulare Local Healthcare District's ("Debtor") *Status Report on Objection to Proof of Claim 231*. Doc. #2555. Since the claims objections are intertwined with a Kern County lawsuit that is held up due to a pending criminal case in Tulare County, the parties stipulated to continue this objection to June 27, 2023. Doc. #2563. The court approved the stipulation and this scheduling conference was CONTINUED to June 27, 2023 at 9:30 a.m. as a status conference. Doc. #2568. The parties shall file joint or unilateral status report not later than June 20, 2023.

6. [17-13797](#)-B-9     **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**  
[WJH-19](#)

CONTINUED SCHEDULING CONFERENCE RE: OBJECTION TO CLAIM OF  
GUPTA-KUMAR MEDICAL PRACTICE, CLAIM NUMBER 232  
1-8-2020    [[1789](#)]

TULARE LOCAL HEALTHCARE DISTRICT/MV  
RILEY WALTER/ATTY. FOR DBT.  
RESPONSIVE PLEADING

FINAL RULING:     There will be no hearing on this matter.

DISPOSITION:     Continued to June 27, 2023 at 9:30 a.m.

NO ORDER REQUIRED.

The court is in receipt of Tulare Local Healthcare District's ("Debtor") *Status Report on Objection to Proof of Claim 232*. Doc. #2557. Since the claims objections are intertwined with a Kern County lawsuit that is held up due to a pending criminal case in Tulare County, the parties stipulated to continue this objection to June 27, 2023. Doc. #2561. The court approved the stipulation and this scheduling conference was CONTINUED to June 27, 2023 at 9:30 a.m. as a status conference. Doc. #2569. The parties shall file joint or unilateral status report not later than June 20, 2023.

7. [17-13797](#)-B-9      **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**  
[WJH-25](#)

CONTINUED SCHEDULING CONFERENCE RE: OBJECTION TO CLAIM OF  
INPATIENT HOSPITAL GROUP, INC., CLAIM NUMBER 230  
1-10-2020    [\[1834\]](#)

TULARE LOCAL HEALTHCARE DISTRICT/MV  
RILEY WALTER/ATTY. FOR DBT.  
RESPONSIVE PLEADING

FINAL RULING:      There will be no hearing on this matter.

DISPOSITION:      Continued to June 27, 2023 at 9:30 a.m.

NO ORDER REQUIRED.

The court is in receipt of Tulare Local Healthcare District's ("Debtor") *Status Report on Objection to Proof of Claim 230*. Doc. #2559. Since the claims objections are intertwined with a Kern County lawsuit that is held up due to a pending criminal case in Tulare County, the parties stipulated to continue this objection to June 27, 2023. Doc. #2565. The court approved the stipulation and this scheduling conference was CONTINUED to June 27, 2023 at 9:30 a.m. as a status conference. Doc. #2570. The parties shall file joint or unilateral status report not later than June 20, 2023.

**11:00 AM**

1. [22-12154](#)-B-7     **IN RE: DENISE BAILEY**

PRO SE REAFFIRMATION AGREEMENT WITH SANTANDER CONSUMER USA INC.  
1-18-2023    [[23](#)]

NO RULING.

1:30 PM

1. [22-11907](#)-B-7     **IN RE: FREON LOGISTICS**  
[BHR-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
1-9-2023     [[445](#)]

CONTINENTAL BANK/MV  
LEONARD WELSH/ATTY. FOR DBT.  
BRETT RAMSAUR/ATTY. FOR MV.

FINAL RULING:     There will be no hearing on this matter.

DISPOSITION:     Granted in part; denied in part.

ORDER:     The Moving Party shall submit a proposed order in  
conformance with the ruling below.

Continental Bank ("Movant") seeks relief from the automatic stay for cause pursuant 11 U.S.C. § 362(d)(1) with respect to one (1) 2019 Peterbilt Model 579 Truck (the "Truck") and five (5) 2020 Utility Model 3000R Reefer Trailers (the "Trailers", collectively with the Truck, the "Equipment"). Doc. #445. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. 4001(a)(3). *Id.* Though not included in the motion, the memorandum of points and authorities suggests relief should also be granted under § 362(d)(2). Doc. #448.

No party in interest timely filed written opposition. This motion will be GRANTED IN PART under § 362(d)(1) and DENIED IN PART under § 362(d)(2).

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the chapter 7 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

As an informative matter, Movant's Attachment 6B2 to the certificates of service do not appear to be an official matrix from the Clerk of the Court as required by LBR 7005-1. Docs. #450; #598. Unless six or fewer parties are served, LBR 7005-1 requires the movant to attach the Clerk's official matrices containing the names and addresses of all parties served. The Clerk's matrices are available on the court's website or through PACER, shall be downloaded not more than seven days prior to the date of serving the pleadings or other documents, and shall reflect the date of download. LBR 7005-1(d).<sup>1</sup>

Here, the "Attachment 6B2" does not appear to be an official version of Clerk's Attachment 6B2. *Id.* at 6-7. It is not formatted like one of the Clerk's matrices, does not contain a time stamp, and appears to be a replication of the official matrix. Since LBR 7005-1 is ambiguous as to whether the six-party limit for custom matrices refers to six parties per attachment, or six parties total, the court will overlook this potential defect in this instance.

On August 29, 2018 and March 27, 2019, Debtor entered into two agreements to finance the purchase of the Truck and the Trailers, respectively. Docs. #447; #594; *Exs. A-B*, Doc. #595. Debtor's last monthly payment under the first agreement was made on September 16, 2022, leaving a total amount due and owing of \$32,915.10. Docs. #447; #594. Debtor's last payment under the second agreement was made on August 29, 2022, leaving a balance of \$152,050.90 due and owing. *Id.*

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case-by-case basis." *In re Mac Donald*, 755 F.2d 715, 717 (9th Cir. 1985).

11 U.S.C. § 362(d)(2) allows the court to grant relief from the stay if the debtor does not have an equity in such property and such property is not necessary to an effective reorganization.

After review of the included evidence, cause exists to lift the automatic stay because Debtor missed at least one and two pre-petition payments under the first and second agreements, respectively, and three post-petition payments under both agreements. Docs. #447; #594. Movant has produced evidence that Debtor owes a combined sum of \$184,966.00 under both agreements. *Id.* Additionally, Debtor does not have insurance coverage on the Equipment and has ceased doing business. *Id.* Therefore, cause exists for relief from the automatic stay under § 362(d)(1).

The court declines finding that Debtor does not have any equity in the Equipment. Although the Equipment is not necessary for an effective reorganization because this is a chapter 7 case, the Truck has a value of \$75,000.00 and the Trailers are valued at \$55,000.00 each, resulting in a combined value of \$350,000.00. *Cf.* Doc. #193. Since Debtor owes \$184,966.00 under the two agreements, it appears that

Movant is oversecured. Moreover, relief under subsection (d)(2) is moot because the cause exists for stay relief under (d)(1).

Accordingly, this motion will be GRANTED IN PART pursuant to 11 U.S.C. § 362(d)(1) and DENIED IN PART with respect to § 362(d)(2). The 14-day stay of Rule 4001(a)(3) will be ordered waived because the Truck and Trailers are depreciating assets and Debtor has not maintained insurance coverage.

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<sup>1</sup> See Official Certificate of Service Form Information on the court's website, <https://www.caeb.uscourts.gov/CertificateOfServiceForm> (visited Feb. 6, 2023).

2. [22-11907](#)-B-7      **IN RE: FREON LOGISTICS**  
[MBF-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
1-25-2023    [\[668\]](#)

AVTECH CAPITAL, LLC/MV  
LEONARD WELSH/ATTY. FOR DBT.  
EVAN STRASSBERG/ATTY. FOR MV.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Granted in part; denied as moot in part.

ORDER:                        The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed order after hearing.

Avtech Capital, LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to four (4) Peterbilt 579 UL semi-tractors and two (2) International LT625 6x4 semi-tractors (collectively "Vehicles") secured by three separate leases. Doc. #668.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, this motion will be GRANTED IN PART and DENIED AS MOOT IN PART.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.



Between August 16, 2022 and September 22, 2022, Freon Logistics ("Debtor") entered into three leases for the Vehicles, which were secured by lien acknowledgments and UCC Filing Statements. See *Exs. A-D*, Doc. #671. Debtor defaulted under all three leases by failing to make payments under the leases within five days of their respective due dates.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case-by-case basis." *In re Mac Donald*, 755 F.2d 715, 717 (9th Cir. 1985).

11 U.S.C. § 362(d)(2) allows the court to grant relief from the stay if the debtor does not have an equity in such property and such property is not necessary to an effective reorganization.

This motion relates to an executory contract or lease of personal property. The case was converted to chapter 7 on December 14, 2022. Doc. #290. The 60-day time period for the chapter 7 trustee to assume the lease under 11 U.S.C. § 365(d)(1) will expire on February 12, 2023. Pursuant to § 365(p)(1), the leased property will no longer be property of the estate and the automatic stay under § 362(a) will terminate with respect to the estate by operation of law prior to the hearing.

After review of the included evidence, the court finds that "cause" exists to lift the stay with respect to Debtor because Debtor defaulted on all three leases pre-petition. Doc. #670. Further, Debtor has not maintained insurance coverage on the Vehicles.

The court also finds that Debtor does not have any equity in the Vehicles and the Vehicles are not necessary to an effective reorganization because this is a chapter 7. Movant values the Vehicles at \$1,017,759.68, which is less than Movant's claim of \$1,289,409.00, which is based on the stipulated loss owed by Debtor. *Id.*; *Ex. A* at 22, *Ex. B* at 4, *Ex. C* at 21, Doc. #671. Additionally, because the Vehicles are under lease, Debtor does not appear to have any equity in the Vehicles.

Accordingly, this motion will be GRANTED IN PART with respect to Debtor under 11 U.S.C. § 362(d)(1) and (d)(2). The motion will be DENIED AS MOOT IN PART with respect to the estate because Trustee has not assumed the lease under § 365(d)(1).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the Vehicles are depreciating assets.

3. [22-11907](#)-B-7     **IN RE: FREON LOGISTICS**  
[RPM-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
1-24-2023    [[644](#)]

TRANS LEASE, INC./MV  
LEONARD WELSH/ATTY. FOR DBT.  
RANDALL MROCZYNSKI/ATTY. FOR MV.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Granted in part; denied in part.

ORDER:                        The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed order after hearing.

Trans Lease, Inc. ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to five (5) 2021 Peterbilt 579 commercial trucks (collectively "Vehicles"). Doc. #644. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. ("Rule") 4001(a)(3). *Id.*

Written opposition was not required and may be presented at the hearing. In the absence of opposition, this motion will be GRANTED IN PART and DENIED IN PART.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

On January 11, 2023, the court granted Movant's request for stay relief consistent a stipulation between Freon Logistics ("Debtor") and Movant in which Debtor agreed to allow Movant to recover and take possession of the Vehicles, but Movant agreed not to dispose of the Vehicles without further order of this court. Doc. #477. Since then, Movant has located and taken possession of four of the five collateral Vehicles, but one of the recovered Vehicles was involved in a roll-over accident that resulted in significant damage, which is not covered by any insurance. Doc. #646. The final Vehicle was abandoned by its driver somewhere in Rolla, Missouri and, despite Movant's best efforts, it has been unsuccessful in locating or recovering the Vehicle. It is unknown whether the last Vehicle will ever be located, but if stolen, there is no theft insurance coverage from which Movant may recover its loss. *Id.*

Movant now requests further stay relief to dispose of the Vehicles, even though it appears that only three may be fit for sale since one has not been recovered and one has suffered significant damage. Doc. #644.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case-by-case basis." *In re Mac Donald*, 755 F.2d 715, 717 (9th Cir. 1985).

11 U.S.C. § 362(d)(2) allows the court to grant relief from the stay if the debtor does not have an equity in such property and such property is not necessary to an effective reorganization.

After review of the included evidence, the court finds that "cause" exists to lift the stay because Debtor has missed two pre-petition payments totaling \$34,874.53 and three post-petition payments totaling \$49,420.68. Additionally, Debtor has failed to maintain adequate insurance coverage, one Vehicle suffered significant damage while uninsured, and one Vehicle cannot be located.

The court declines finding that Debtor does not have any equity in the Vehicles. Although they are not necessary for an effective reorganization because this is a chapter 7 case, Movant's valuation of \$508,750.00 exceeds its \$487,144.59 lien, leaving a small \$21,605.41 equity cushion. However, relief under subsection (d)(2) is moot because cause exists for stay relief under (d)(1).

Written opposition was not required and may be presented at the hearing. In the absence of opposition, this motion will be GRANTED IN PART pursuant to 11 U.S.C. § 362(d)(1) and DENIED IN PART with respect to § 362(d)(2).

If granted, the 14-day stay of Rule 4001(a)(3) will be ordered waived because the Vehicles are depreciating assets, Debtor has failed to maintain insurance coverage, one Vehicle has suffered significant damage while uninsured, and one Vehicle cannot be located.

4. [22-10209](#)-B-7     **IN RE: NOREEN GUZMAN**  
[BDB-2](#)

CONTINUED MOTION TO AVOID LIEN OF PHILLIP ERKENBRACK  
8-11-2022    [\[42\]](#)

NOREEN GUZMAN/MV  
BENNY BARCO/ATTY. FOR DBT.  
RESPONSIVE PLEADING

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Granted.

ORDER:                        The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed order after hearing.

This motion was originally heard on August 30, 2022. Doc. #50.

Noreen Jone Guzman ("Debtor") sought to avoid a judicial lien in favor of Phillip Erkenbrack dba Hassle Free Small Claims & Collection Service ("Creditor") in the sum of \$4,146.00 and encumbering residential real property located at 346 Buena Vista Court, Merced, CA 95348 ("Property").<sup>2</sup> Doc. #19.

Creditor opposed on the basis that Property is investment property rather than Debtor's residence or domicile, and Debtor lives in San Jose, California, not Merced, California. Doc. #48. Creditor requested the court to set a briefing schedule so Creditor can further apprise the court of the issues regarding Debtor's claimed homestead exemption.

Consequently, the court entered the defaults of all non-responding parties, continued the matter, and issued a scheduling order setting February 2, 2023 as an evidentiary hearing. Docs. #50; #52; #65; #67; ##73-74.

On January 17, 2023, Creditor withdrew his opposition. Doc. #76. The evidentiary hearing was subsequently vacated, and the court reset this matter for hearing on February 14, 2023. Docs. ##78-79; #81.

To avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). § 522(f)(1); *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), *aff'd*, 24 F.3d 247 (9th Cir. 1994)).

Here, a judgment was entered against Debtor in favor of Creditor on April 27, 2004, which was renewed on April 28, 2014 in the amount of \$4,146.00. Doc. #45, *Ex. A*. The renewed abstract of judgment was issued on August 10, 2021 and recorded in Merced County on November 22, 2021. *Id.* That lien attached to Debtor's interest in Property and appears to be the only non-consensual judgment lien encumbering Property. Docs. #13, *Sched. D*; #46. Property is also not encumbered by any consensual liens.

As of the petition date, Property had an approximate value of \$325,000.00. Doc. #13, *Sched. A/B*. Debtor claimed a \$325,000.00 exemption in Property pursuant to Cal. Code. Civ. Proc. ("CCP") § 704.730. Section 704.730 provides:

(a) The amount of the homestead exemption is the greater of the following:

(1) The countywide median sale price for a single-family home in the calendar year prior to the calendar year in which the judgment debtor claims the exemption, not to exceed six hundred thousand dollars (\$600,000).

(2) Three hundred thousand dollars (\$300,000).

(b) The amounts specified in this section shall adjust annually for inflation, beginning on January 1, 2022, based on the change in the annual California Consumer Price Index for All Urban Consumers for the prior fiscal year, published by the Department of Industrial Relations.

C.C.P. § 704.730. On January 1, 2022, this exemption was automatically updated to increase the minimum exemption to \$312,600.00 and the countywide median sale price for a single-family home maximum to \$625,200.00 based on the change in the annual California Consumer Price Index (4.2%).

The Eastern District of California has held that "the debtor, as the exemption claimant, bears the burden of proof which requires her to establish by a preponderance of the evidence that [the property] claimed as exempt in Schedule C is exempt under [California law] and the extent to which that exemption applies." *In re Pashenee*, 531 B.R. 834, 837 (Bankr. E.D. Cal. 2015). Since Debtor is asserting a homestead exemption exceeding the \$312,600.00 minimum, Debtor bears the burden of proof on showing that the claimed exception is within the county-wide median sales price for single-family homes in Merced County in the calendar year 2021 (which is the calendar year before the 2022 calendar year in which Debtor filed this bankruptcy).

Debtor's attorney, Benny D. Barco, retrieved the monthly median home sales prices for Merced County from the California Association of Realtors' website ("CAR").<sup>3</sup> Doc. #44. The median sales data is as follows:

Month-Year	Merced	Ascending
Jan-21	\$307,000	\$307,000
Feb-21	\$318,750	\$318,000
Mar-21	\$318,000	\$318,750
Apr-21	\$325,000	\$325,000
May-21	\$350,000	\$350,000
Jun-21	\$360,000	<b>\$357,500</b>
Jul-21	\$357,500	<b>\$360,000</b>
Aug-21	\$369,250	\$369,250
Sep-21	\$370,000	\$370,000
Oct-21	\$370,000	\$370,000
Nov-21	\$375,000	\$375,000
Dec-21	\$375,000	\$375,000

*Id.* The median sales price of single-family homes in Merced County for calendar year 2021 is the average of \$357,500 and \$360,000, the two middle points in the data set, which results in \$358,750. Therefore, Debtor appears to be entitled to claim up to \$358,750 in equity for the homestead exemption pursuant CCP 704.730(a)(1). As noted above, Debtor has only claimed \$325,000.00, which is within the amount she is entitled to exempt.

Declarant, Mr. Barco, does not state that he is an expert in residential real property pricing in Merced County. The basis for the claimed exemption is information gleaned from a website. This is hearsay. There is also no foundation for allowing the evidence as an exception to the hearsay rule. See Fed. R. Evid. 803(17). Yet, there is no objection to the admission of the evidence. In the absence of objection, the court will admit the evidence.

Strict application of the § 522(f)(2) formula is as follows:

Amount of Creditor's judicial lien	\$4,146.00
Total amount of unavoidable liens	+ \$0.00
Amount of Debtor's claimed exemption in Property	+ \$325,000.00
<i>Sum</i>	= \$329,146.00
Debtor's claimed value of interest absent liens	- \$325,000.00
Amount Creditor's lien impairs Debtor's exemption	= \$4,146.00

*All Points Capital Corp. v. Meyer (In re Meyer)*, 373 B.R. 84, 91 (B.A.P. 9th Cir. 2006). The § 522(f)(2) formula can be simplified by going through the same order of operations in the reverse, provided that determinations of fractional interests, if any, and lien deductions are completed in the correct order. Property's encumbrances can be re-illustrated as follows:

Fair market value of Property	\$325,000.00
Total amount of unavoidable liens	- \$0.00
Homestead exemption	- \$325,000.00
Remaining equity for judicial liens	= \$0.00
Creditor's judicial lien	- \$4,146.00
Extent Debtor's exemption impaired	= (\$4,146.00)

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is insufficient equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs Debtor's exemption in the Property and its fixing will be avoided.

Debtor has established the four elements necessary to avoid a lien under § 522(f)(1). This motion will be GRANTED. The proposed order shall include a copy of the abstract of judgment attached as an exhibit.

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<sup>2</sup> Debtor complied with Fed. R. Bankr. P. 7004(b)(3) by serving Creditor via regular U.S. mail at PO Box 1202, San Jose, CA 95108 on August 11, 2022. Doc. #47.

<sup>3</sup> Mr. Barco included the CAR Historical Housing Data webpage at which countywide median prices for single family homes can be downloaded. Doc. #45, Ex. E; <https://www.car.org/en/marketdata/data/housingdata> (Feb. 3, 2023). As of this writing, the *MedianPricesofExistingDetachedHomesHistoricalData.xls* file was last updated on January 18, 2023.

5. [22-11638](#)-B-7      **IN RE: HOWARD/LAURA MILLER**  
[DWE-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
12-21-2022    [\[24\]](#)

U.S. BANK NATIONAL ASSOCIATION/MV  
MARK ZIMMERMAN/ATTY. FOR DBT.  
DANE EXNOWSKI/ATTY. FOR MV.

FINAL RULING:      There will be no hearing on this matter.

DISPOSITION:      Granted in part and denied as moot in part.

ORDER:              The Moving Party shall submit a proposed order in conformance with the ruling below.

U.S. Bank National Association ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2021 Buick Envision Essence ("Vehicle"). Doc. #24. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. ("Rule") 4001(a)(3). Howard C. Miller and Laura M. Miller (collectively "Debtors") did not oppose.

No party in interest timely filed written opposition. This motion will be GRANTED.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the Debtors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

11 U.S.C. § 362(c)(2)(C) provides that the automatic stay of § 362(a) continues until a discharge is granted. Debtors' discharge was entered on January 23, 2023. Doc. #31. Therefore, the automatic stay terminated with respect to the Debtors on January 23, 2023. This motion will be DENIED AS MOOT IN PART as to the Debtors' interest and will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case-by-case basis." *In re Mac Donald*, 755 F.2d 715, 717 (9th Cir. 1985).

After review of the included evidence, the court finds that "cause" exists to lift the stay because with respect to the chapter 7 trustee because Debtors have failed to make three pre-petition payments of \$1,460.52 and two post-petition payments totaling \$976.38. Movant has produced evidence that Debtors owe \$31,776.39 to Movant. Docs. #28; #29.

Accordingly, the motion will be GRANTED IN PART as to the trustee's interest and DENIED AS MOOT IN PART to the Debtors' interest under § 362(c)(2)(C).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the Vehicle is a depreciating asset.



6. [20-13365](#)-B-7     **IN RE: LOUIS MORGAN**  
[AP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
1-9-2023    [[24](#)]

JPMORGAN CHASE BANK, N.A./MV  
MARK ZIMMERMAN/ATTY. FOR DBT.  
WENDY LOCKE/ATTY. FOR MV.

FINAL RULING:     There will be no hearing on this matter.

DISPOSITION:     Denied without prejudice.

ORDER:             The court will issue an order.

J.P. Morgan Chase ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2019 Chevrolet Impala ("Vehicle"). Doc. #24. Movant also requests waiver of the 14-day of Fed. R. Bankr. P. ("Rule") 4001(a)(3).

This motion will be DENIED WITHOUT PREJUDICE for failure to comply with Rule 4001(a)(1).

Chapter 7 trustee Irma Edmonds ("Trustee") was not properly served. Rule 4001(a)(1) requires motions for relief from the automatic stay to be made in accordance with Rule 9014. Rule 9014(b) requires motions in contested matters to be served upon the parties against whom relief is being sought pursuant to Rule 7004. Since this motion will affect property of the estate, the Chapter 7 Trustee must be served in accordance with Rule 7004.

Rule 7004 allows service in the United States by first class mail by "mailing a copy of the summons and complaint to . . . the place where the individual regularly conducts a business[.]" Rule 7004(b)(1). Electronic service is precluded here because Rule 9036 "does not apply to any paper required to be served in accordance with Rule 7004." Rule 9036(e).

Here, Attachment 6A1 says only the Debtor was served via United States mail. Doc. #30. Attachment 6B1 states that the Trustee Irma Edmonds was served electronically. *Id.* Debtor's attorney, Mark Zimmerman, was also served by email in compliance with Local Rule of Practice 7005-1, but this is permissible under Rule 7004(g).

Accordingly, this motion will be DENIED WITHOUT PREJUDICE because Trustee was not properly served in accordance with Rule 4001(a)(1).